IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 875 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AGRO INDUSTRIES CORPN. - Petitioner(s)

Versus

RAMESHBHAI D MAKWANA & 20 - Respondent(s)

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Appearance :

MS PJ DAVAWALA for Petitioner No(s).: 1.

MRS DT SHAH for Respondent No(s).: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,21.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 1st December, 1998 passed by the Labour Court, Ahmedabad in Reference [L.C.A.] No. 1215 of 1992, whereby the Labour Court has directed the petitioner to

reinstate the respondents on his original post with continuity of service along with 50% back wages.

2. The short facts of the case are that the respondents were working at Bavla plant of the petitioner as daily wages. It is the case of the respondents that they were working as such since last three years. The petitioner without following any procedure under the Industrial Disputes Act, 1947 orally terminated their services w.e.f. 23rd December, 1992. Feeling aggrieved by the action of the petitioner, the respondents raised an industrial dispute which was ultimately referred to the Labour Court, Ahmedabad for adjudication. The Labour Court after considering the materials produced before it, passed the impugned award. Hence, this petition.

3. Ms. Davawala learned advocate for the petitioner states that the petitioner Corporation is closed after following the necessary procedure and with the permission of the State Government. She has further submitted that therefore, it is not possible to reinstate the respondents.

4. I have heard the learned counsel for the parties

and have perused the materials produced on record. Since the petitioner Corporation is closed, the only question which is now required to be considered is with regard to back wages only. However, the Labour Court while granting back wages has not give any cogent reasons, as to on what basis, the Labour Court has awarded 50% back wages.

4.1. Moreover in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.2. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137, [2005 (5) S.C.C. p. 591], it has been held that an order for payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua back wages is required to be quashed and set aside.

5. In above view of the matter, the impugned award dated 1st December, 1998 passed by the Labour Court, Ahmedabad in Reference [L.C.A.] No. 1215 of 1992, qua reinstatement in service is concerned, the same is exhausted in view of the fact that the petitioner Corporation is closed and qua back wages, it is quashed and set aside. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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